

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

KINDRED REHAB SERVICES, INC.
d/b/a RehabCare,

Plaintiff

v.

Case No. 17-cv-910

MOUNT CARMEL HEALTH CARE, LLC
d/b/a BURLINGTON MEDICAL AND
REHAB CENTER, et al.,

Defendants.

JOINT RULE 26(F) REPORT

Pursuant to FED. R. CIV. P. 26, Civil L. R. 26, and the Court's Order setting a Rule 16 Scheduling Conference in this matter for December 14, 2017 at 10:00 a.m. [Dkt. 27], Plaintiff, Kindred Rehab Services, Inc. d/b/a RehabCare ("RehabCare") and Defendants¹ (collectively, the "Parties" and each a "Party"), through their respective counsel, conducted their Rule 26(f) conference via telephone on November 17, 2017 and continued discussions thereafter. The Parties jointly submit the following Joint Rule 26(f) Report.

1. NATURE OF THE CASE.

Subject matter jurisdiction: As set forth in the Complaint in detail, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 in that there is complete diversity of

¹ Mount Carmel Health Care, LLC d/b/a Burlington Medical and Rehab Center ("Burlington"); Colonial Manor Health Care, LLC d/b/a Colonial Medical and Rehabilitation Center ("Colonial"); Eastview Health Care, LLC d/b/a Eastview Medical and Rehabilitation Center ("Eastview"); San Luis Health Care, LLC d/b/a Maple Ridge Rehab and Care Center ("Maple"); North Ridge Health Care, LLC d/b/a North Ridge Medical and Rehabilitation Center ("North Ridge"); Sheridan Medical, LLC d/b/a Sheridan Medical Complex; and Woodstock Health Care, LLC d/b/a Waters Edge Rehab and Care Center ("Waters Edge") are collectively the "Defendants" and individually each a "Defendant."

citizenship of the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

The Parties' brief statement of the case: RehabCare provides therapy-related services to resident of skilled nursing facilities, such as those operated by each Defendant. RehabCare has asserted claims against each Defendant pursuant to separate agreements for breach of contract alleging nonpayment for Therapy Services. In the alternative, RehabCare has asserted two further claims, the first for promissory estoppel based on representations Defendants allegedly made regarding payment for services RehabCare claims to have provided and upon which it further claims to have relied to its detriment. Plaintiff's second claim in the alternative is for unjust enrichment based on the alleged valuable nature of services RehabCare claims to have provided to each individual Defendant for which RehabCare further alleges Defendants have not paid. Defendants deny these allegations and deny RehabCare is entitled to the relief it seeks in this action.

2. AMENDMENT OF PLEADINGS.

The Parties may need to amend the pleadings based on facts discovered during discovery relating to the claims and defenses asserted in this matter.

3. MOTIONS CONTEMPLATED AT THIS TIME.

Currently pending is Defendants' Motion for Separate Trials or in the Alternative to Sever Certain Claims [Dkt. 14, 15], which RehabCare opposes and has filed a brief in opposition [Dkt. 28]. In addition, the Parties foresee requiring a limited protective order in this matter as discovery may involve protected health information ("PHI") as that term is defined under the Health Insurance Portability and Accountability Act. The Parties will submit a proposed order for a protective order.

4. MATTERS THAT MAY AFFECT SCHEDULING THIS CASE FOR FINAL DISPOSITION.

The Parties do not currently foresee any specific matters that may affect scheduling this case for final disposition.

5. COUNSEL PARTICIPATING IN THE RULE 16 SCHEDULING CONFERENCE.

The following attorneys will participate in the Rule 16 Scheduling Conference on behalf of RehabCare:

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The following attorneys will participate in the Rule 16 Scheduling Conference on behalf of Defendants:

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6. RULE 26 DISCOVERY PLAN REQUIREMENTS

- A. **Rule 26(f)(3)(A):** The Parties do not foresee any changes in timing, form, or requirement for initial disclosures under Rule 26(a). The Parties will exchange Rule 26(a) disclosures on January 19, 2017.
- B. **Rule 26(f)(3)(B):** Discovery will be sought with respect to all claims and defenses asserted by the Parties. The Parties do not believe that discovery should be conducted in phases or be limited to or focused on particular issues.
- C. **Rule 26(f)(3)(C):** The Parties agree that electronically stored information (“ESI”) in the form of emails may be requested and will be disclosed in discovery. The Parties are not aware of any issues relating to the disclosure or discovery of ESI that the Court needs to address, except that the Parties may need to seek a limited protective order as addressed above with respect to PHI. The Parties have agreed to produce electronically stored information in hard copy or PDF as an initial matter. Once the Parties have had the opportunity to review such documents, the Parties agree, if necessary, to confer regarding any addition exchange or revisions that any Party believes necessary.
- D. **Rule 26(f)(3)(D):** The Parties do not anticipate any particular, non-standard issues with respect to claims of privilege that may be asserted in this action. Should such issues arise, they will work together to resolve and seek assistance from the Court as necessary.
- E. **Rule 26(f)(3)(E):** The Parties do not currently anticipate any changes in limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules.

F. Rule 26(f)(3)(F): The Parties do not currently propose any additional orders at this time. Once fully briefed, the Parties do request an order on Defendants' Motion for Separate Trials or to Sever Claims. RehabCare requests that the Court deny this motion. Defendants request that the Court grant it or, alternatively, that the Court reserves its ruling on this Motion until the matter is closer to trial.

7. LOCAL RULE REQUIREMENTS.

Pursuant to L.R. 26, the Parties state that they have agreed to produce any electronically stored information in hard copy or PDF as an initial matter. Once the Parties have had the opportunity to review such documents, the Parties agree, if necessary, to confer regarding any addition exchange or revisions that any Party believes necessary.

Respectfully submitted,

Dated this 30th day of November, 2017

GODFREY & KAHN, S.C.

s/Nina G. Beck

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Dated this 30th day of November, 2017

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